FOURTEENTH AMENDMENT:

"* * * No State * * * shall * * * deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATUTORY PROVISIONS INVOLVED

Code of Alabama 1940 (Recomp. 1958)

"Title 14, Section 331. GRAND LARCENY.—Any person * * * who steals any personal property * * * of the value of twenty-five dollars or more, * * * with intent to convert the same to his own use * * * shall be guilty of grand larceny * * *."

STATEMENT OF THE CASE

Petitioner was charged upon an indictment (R. 2) found by the grand jury of Jefferson County, Alabama, January term, 1967, which said indictment contained three counts in Code form as follows:

"INDICTMENT #14052

THE STATE OF ALABAMA) CIRCUIT COURT OF
JEFFERSON COUNTY) TENTH JUDICIAL CIRCUIT

January Session 1967

The grand jury of said county charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL, feloniously took and carried away One two-door Ford Mustang automobile of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks.

2nd: The Grand Jury of said county further charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL,

feloniously took and carried away in the State of Tennessee, One two-door Ford Mustang of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks, and brought said motor vehicle into the County of Jefferson in this State.

3rd: The Grand Jury of said county further charge that, before the finding of this indictment, DAVID EARL TRAMMELL, alias DAVID EARL TRAMMEL did buy, receive, conceal or aid in concealing One two-door Ford Mustang Automobile of the value of Eighteen Hundred Ninety-Five Dollars, the personal property of Laura Hendricks, knowing that it was stolen and not having the intent to restore it to the owner, against the peace and dignity of the State of Alabama.

Earl C. Morgan
District Attorney, Tenth Judicial Circuit of Alabama."

On October 9, 1967, petitioner entered a plea of "* * * guilty to grand larceny as charged in the indictment * * *." (R. 7). The trial court entered a judgment finding petitioner "* * * guilty of grand larceny as charged in the indictment * * *," (R. 7) and sentencing petitioner to imprisonment for a term of four years. Petitioner then made application for probation, which application was passed until October 27, 1967, for a hearing (R. 7).

On October 27, 1967, the trial court denied petitioner's application for probation and petitioner gave notice of appeal to the Court of Appeals of Alabama (R. 8). On October 22, 1968, the Court of Appeals of Alabama entered a judgment and opinion which held in substance that petitioner's plea of guilty in open court to "grand larceny" rendered immaterial all issues raised on appeal and that the decision of the United States Court of Appeals for the Fifth Circuit in *Busby* v. *Holman*, 356 F. 2d 75, required that petitioner's conviction be affirmed (R. 13-14). There-

after, and within the time required by law, petitioner made an application for rehearing in the Court of Appeals on the grounds, inter alia, that the Court had misconstrued the decision of the Fifth Circuit in *Busby* v. *Holman,* supra, and that the errors complained of and issues raised on appeal were jurisdictional and, therefore, not waived or rendered immaterial by petitioner's plea of guilty.

On November 12, 1968, petitioner's application for rehearing was overruled without opinion (R. 14).

On March 13, 1969, the Supreme Court of Alabama denied petitioner's application for a writ of certiorari to the Court of Appeals without an opinion. (The proceedings in the Supreme Court are enclosed in the record in the Court of Appeals without pagination.)

Petitioner first raised the lack of jurisdiction of the trial court to convict and impose punishment for an offense committed in the State of Tennessee on appeal to the Court of Appeals. Petitioner then pointed out on rehearing that reliance upon the holding of the United States Court of Appeals for the Fifth Circuit in *Busby* v. *Holman,* supra, was misplaced, in that the issue raised by petitioner was jurisdictional. This issue was also raised on petition for writ of certiorari in the Supreme Court of Alabama.

REASONS FOR GRANTING THE WRIT

Crimes Are Cognizable and Punishable Only in the State Wherein Committed and the Courts of Alabama Have No Jurisdiction to Punish for an Offense Committed in the State of Tennessee.

I

On October 22, 1968, the Court of Appeals of Alabama entered a judgment and opinion affirming petitioner's conviction in the Circuit Court of Jefferson County, Alabama.

In its opinion the Court held that petitioner's plea of guilty to "grand larceny", Count One of the indictment charging said offense in the form prescribed by Title 15, Section 259, Form 66, Code of Alabama 1940 (Recomp. 1958), rendered immaterial the issues raised and the questions presented on appeal. The Court relied upon the decision of the United States Court of Appeals for the Fifth Circuit in *Busby* v. *Holman,* 356 F. 2d 75, and construed said decision as requiring that petitioner's conviction be affirmed.

Petitioner contends that the Court of Appeals erred in its construction and application of the above cited federal case. The pertinent language in the decision referred to is as follows:

> "* * * the plea, if voluntarily and understandingly made, is conclusive as to the defendant's guilt, admitting all the facts charged and waiving all non-jurisdictional defects in the prior proceedings against him (Citations omitted)."
>
> *Busby* v. *Holman,* supra, at page 77.

The issues raised in the Court of Appeals of Alabama by petitioner concerned the jurisdiction of an Alabama circuit court to entertain and proceed to judgment on an indictment charging grand larceny when the larceny complained of occurred without the territorial limits of the State of Alabama, said fact being readily apparent on the face of the indictment. These issues raised serious questions concerning the jurisdiction of the sentencing court to entertain the proceedings therein; thus rendering *Busby* v. *Holman,* supra, inapplicable as authority in the instant proceedings in that said case merely held that a plea of guilty waived all non-jurisdictional defects, which petitioner readily admits.

Petitioner insists that the Court of Appeals erred in its construction of the case relied on and further insists

that it is well settled and fundamental that a plea of guilty does not waive a lack of jurisdiction in the sentencing court as is hereinafter shown, and that, therefore, the conviction was coram non judice and void.

II

Article IV, Section 2 of the Constitution of the United States clearly indicates that only the state wherein an offense is committed has jurisdiction to punish for that offense. The Fifth Amendment to the Constitution of the United States guarantees to an accused the right that he shall not be placed twice in jeopardy and that he shall not be punished for a crime without due process of law.

The Sixth Amendment to the Constitution of the United States guarantees to an accused the right to be tried by an impartial jury of the state and district wherein the crime shall have been committed and the right to compel the attendance of witnesses in his favor.

The due process clause of the Fourteenth Amendment to the Constitution of the United States makes the above constitutional guarantees and prohibitions binding upon the states so that it is constitutionally impermissible for any state to impose punishment for a crime committed outside of its territorial boundaries.

The proposition that courts of a particular sovereignty have no extra territorial jurisdiction of offenses committed outside of their territorial boundaries has been recognized and approved by this Court. *Dennick* v. *Central Railroad Co.*, 103 U.S. 11, 26 L. Ed. 439; *Wisconsin* v. *Pelican Insurance Co.*, 127 U.S. 265, 32 L. Ed. 239; *Huntington* v. *Attrill*, 146 U.S. 657, 36 L. Ed. 1123, 13 S. Ct. 224. See also *Ex parte McNeely*, 36 W. Va. 84, 14 S.E. 436; *People* v. *Devine*, 185 Mich. 50, 151 N.W. 646; *Stewart* v. *Jessup*, 51 Ind. 413; *State* v. *Seay*. 3 Stew. (Ala.) 123.

It is petitioner's contention that the Constitution of the United States as interpreted in the above referenced cases precludes the punishment in Alabama of an offense committed in another state. To hold otherwise would be to allow an accused to be twice placed in jeopardy for the same offense, for a conviction here would surely be no bar to a trial and conviction for the same offense in the state wherein the offense was committed. Such a conclusion would also deprive to an accused his right to be tried for an offense in the state wherein the offense was committed, and would further deprive him of his right to compel the attendance of witnesses in his behalf, thereby depriving the defendant of his liberty without due process of law.

In *Dennick* v. *Central Railroad Co.*, supra, the Supreme Court of the United States held that criminal laws can only be enforced by the courts of the state where the offense was committed. In *Wisconsin* v. *Pelican Insurance Co.*, supra, the Court held that the proper place for punishment is where the crime is committed and that no court concerns itself with punishment for any act committed without its territorial boundaries. Both of the above cited cases were recognized as authority in *Huntington* v. *Attrill*, supra, wherein it was held:

> "Crimes and offenses against the laws of any State can only be defined, prosecuted and pardoned by the sovereign authority of that State; and the authorities, legislative, executive or judicial, of other States take no action with regard to them, except by way of extradition to surrender offenders to the State whose laws they have violated, and whose peace they have broken."
>
> "Penal laws have no extraterritorial effect."
>
> "Crimes are cognizable and punishable only in the State wherein committed."

III

The petitioner on October 9, 1967, entered a plea of "* * * guilty to grand larceny, as charged in the indictment * * *." (R. 7). The Court, upon petitioner's plea of guilty, entered a judgment of "* * * guilty of grand larceny, as charged in the indictment * * *." (R. 7). The indictment (R. 2) contained three counts. Count One charged grand larceny in the form prescribed by Title 15, Section 259, Form 66, Code of Alabama 1940 (Recomp. 1958). Counts Two and Three charged, respectively, the offenses of bringing stolen goods into this State and buying, receiving and concealing stolen goods in the appropriate forms as prescribed by statute. Count Two of the indictment (R. 2) charged that the petitioner "* * * feloniously took and carried away in the State of Tennessee * * *," an automobile and brought same into this State. Thus it is apparent upon the face of the indictment that the larceny complained of, and the offense to which petitioner entered his plea of guilty, and upon which he was convicted, occurred in the State of Tennessee and without the territorial boundaries of the State of Alabama. The conviction thus entered cannot be sustained as the court was without jurisdiction of the offense charged in the count of the indictment upon which the judgment of conviction was entered.

This lack of jurisdiction in an Alabama court to impose punishment for an offense committed in Tennessee is most certainly not a non-jurisdictional defect and, therefore, the Court of Appeals erred in applying the decision of the United States Court of Appeals in *Busby* v. *Holman*, supra, in its opinion affirming petitioner's conviction. Petitioner is not precluded from raising such lack of jurisdiction on appeal by reason of his having entered a plea of guilty in the Circuit Court.

Petitioner contends that the Court erred in its application of the above cited federal case and points out that the Court of Appeals therein held that a plea of guilty waived all non-jurisdictional defects in the prior proceedings in that case. The defect complained of on appeal in the instant case was jurisdictional in that it questioned the jurisdiction of an Albama court to entertain a prosecution on a charge of grand larceny when it was readily apparent on the face of the indictment that the offense was committed without the territorial boundaries of the State of Alabama. Such fact goes to the very heart and essence of the jurisdiction of the sentencing court; thus rendering the above cited federal case inapplicable as authority.

CONCLUSION

Petitioner respectfully submits the Court of Appeals of Alabama has ignored the applicable decisions of this Court in affirming petitioner's conviction and denied him a right guaranteed by the Constitution of the United States. The denial of this very right was specifically mentioned by the founders of this nation in the Declaration of Independence.

Wherefore petitioner prays that a writ be granted to review the decision of the Court of Appeals of Alabama as such decision is not in accord with the applicable decisions of this Court and tacitly approves a denial of petitioner's fundamental rights.

Respectfully submitted,

WILLIAM B. MCCOLLOUGH, JR.

APPENDIX A

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE ALABAMA COURT OF APPEALS

OCTOBER TERM, 1968-69

6 Div. 363

David Earl Trammell, alias

v.

State

Appeal from Jefferson Circuit Court

JOHNSON, JUDGE

Appellant pled guilty in open court to "grand larceny". Count One of the indictment follows Form 66, Sec. 259, Tit. 15, Code of Ala., 1940.

Hence, all questions as to the remaining counts in the indictment are immaterial. The plea of guilty under *Busby* v. *Holman*, 356 F. 2d 75 (5th Cir., 1966), requires that the judgment below be

AFFIRMED.